



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/608,461

06/27/2003

Gregory P. Bowman

02-1370

9379

74576

7590

02/02/2009

HUGH P. GORTLER

23 Arrivo Drive

Mission Viejo, CA 92692

EXAMINER

MCCORMICK, GABRIELLE A

ART UNIT

PAPER NUMBER

3629

MAIL DATE

DELIVERY MODE

02/02/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/608,461	<b>Applicant(s)</b> BOWMAN ET AL.	
	<b>Examiner</b> Gabrielle McCormick	<b>Art Unit</b> 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,5,10,16-20,25,30,44,45 and 47-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 10, 16-20, 25, 30, 44-45 and 47-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Claims***

- 20. This action is in reply to the Amendment filed on January 13, 2009.
- 21. Claims 1, 5, 25, 44 and 48-49 have been amended.
- 22. Claim 46 has been canceled.
- 23. Claims 1, 5, 10, 16-20, 25, 30, 44-45 and 47-49 are currently pending and have been examined.

### ***Previous Objections to the Specification***

- 24. The Examiner thanks the Applicant for the amendment to correct the specification and enters the amendment. Accordingly, the previous objection is withdrawn.
- 25. The Examiner thanks the Applicant for the amendment to the claims that renders moot the previous objection to the specification.

### ***Previous Claim Objections***

- 26. The Examiner thanks the Applicant for amending claim 44 to overcome the previously cited objection. The objection is withdrawn.

### ***Claim Rejections - 35 USC § 112***

- 27. The Examiner thanks the Applicant for the amendments to claims 1, 48 and 49 to replace "efficiency" with "experience". This amendment renders the rejection under 112, first paragraph for new matter, moot. The rejection is withdrawn.
- 28. The Examiner has reconsidered the previous rejections of claims 16-18, 20, 45 and 46 under 112, first paragraph for enablement. Applicant has pointed out that the art of record teaches these limitations. Accordingly, the Examiner has concluded that the combination of the nature of

Art Unit: 3629

the invention, the state of the prior art and the level of one of ordinary skill is sufficient to provide enablement for the cited claims. The rejection is withdrawn.

29. Specifically, the factors used to generate a score are well known, further, it is well known how to calculate an average from desire rankings.
30. With regard to claim 46 (now encompassed in claims 1, 48 and 49), the Examiner will understand that the "results" that are validated are the inputs of the inline interview by the job seeker.
31. With regard to the rejections under 112, second paragraph, Applicant's amendments to claims 5 and 25 are sufficient to overcome the previous rejection.
32. As per claims 16 and 20, Applicant's arguments are partially persuasive. Though dependent claims can introduce additional terms, the terms will be given their ordinary meaning and the term "job activity" will be understood as synonymous with "skill".
33. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
34. Claims 25, 45 and 47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
35. Claim 20 requires a choice of either an experience or a capability, however it is unclear what the differentiation between *experience* and *capability* is. The specification does not provide guidance as to how these terms differ. In contrast, the specification on page 6, line 26 provides that experience may be ranked as expert, proficient, limited, etc. One of ordinary skill in the art would understand these rankings to define capability. Therefore, giving the terms their ordinary meaning, in light of the specification, results in ambiguity between the two terms.
36. Claim 45 states that "the rankings are based on an average desire to perform all skills". Claim 1 provides for a job seeker ranking their desire to perform each of the skills. It is unclear whether the intent of claim 45 is to average the rankings given to each skill and thus determine an

Art Unit: 3629

average desire for all skills or whether a job seeker has ranked each skill desire as “average”.

Applicant's arguments are not sufficient to satisfy the lack of clarity of the limitation.

37. Claim 47 states, a *computer for performing the method of claim 1*. A computer is an apparatus, therefore, as dependent from a method claim, the statutory class (i.e., process, machine, manufacture, or composition of matter) is unclear. The claim embraces two different statutory classes of invention and it is unclear whether to treat the claim as a method claim or as an apparatus claim. The Examiner notes that if amended to claim the method which is performed by a computer, that this would appear redundant with the now amended claim 1 which claims using a computer to perform the method.

### ***Claim Rejections - 35 USC § 101***

38. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

39. Claims 1, 5, 10, 16-18, 20 and 44-45 are rejected as being directed to non-statutory subject matter. Claim 1 is a method claim that recites process steps that are not tied to a particular machine. Based on recent Federal Circuit decision (see *In re Bilski*), an applicant may show that a process claim satisfies 35 USC 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. (See Benson, 409 U.S. at 70). First, as illustrated by Benson, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. (See Benson, 409 U.S. at 71-72). Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. (See Flook, 437 U.S. at 590).
40. Because the applicable test to determine whether a claim is drawn to a patent-eligible process under 35 USC 101 is the machine-or-transformation test set forth by the Supreme Court, claim 1

Art Unit: 3629

fails that test and is therefore rejected under 35 USC 101. Claims 5, 10, 16-18, 20 and 44-45 are rejected through dependency from claim 1.

41. Applicant has amended the preamble of claim 1 to cite that the method is performed using a computer, however, structural elements solely recited in the preamble are not accorded patentable weight. To overcome this rejection, the structural elements should be recited as part of the body of the claim.

### ***Claim Rejections - 35 USC § 103***

42. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. **Claims 1, 5, 10, 16-18, 20, 25, 30** are rejected under 35 U.S.C. 103(a) as being unpatentable over Puram et al. (US Pat. No. 6,289,340, hereafter referred to as "Puram") in view of Stimac (US Pub. No. 2003/0071852) in view of McCall et al. (US Pub. No. 2002/0059228, hereinafter referred to as "McCall") in view of Linz (US Pub. No. 2001/0032112).
23. **Claims 1, 47, 48 and 49:** Puram discloses the computer and article (C2; L35-43 and Fig. 1a-c)
- *providing the inline interview to one or more prospective job seekers; (col. 2; lines 50-53) wherein each job seeker is presented with a list of skills and asked to rank their experience with each of the skills; (col. 4; lines 6-12)*
  - *generating a score for each of the job seekers, each score based at least in part on the rankings. (col. 7; lines 13-26).*
24. Puram does not disclose that the inline interview skills are *related to a position of interest*.

Art Unit: 3629

25. Stimac, however, discloses a method and system that allows a job applicant to answer a series of predetermined job related profile questions that are custom tailored for each position (P[0009]) (i.e., an inline interview for the position to be filled).
26. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included targeting the skills assessment for a position of interest, as disclosed by Stimac, in the system of Puram for the motivation of increasing a pool of eligible job applicants by providing a means for applicants who don't have a current and ready resume to apply, as well as allowing applicants to customize responses to a specific position. (Stimac; P[0004]). A further advantage of providing position specific profiling is the ability to collect a history of successful and unsuccessful hires in order to statistically analyze the data to improve hiring practices in the future. (Stimac; P[0135]).
27. Puram does not disclose a job seeker ranking *their desire to perform each of the skills*.
28. McCall, however, discloses a system for matching job seekers to jobs based on skills and preferences. The "eres owner" (i.e., the job seeker) assess factors related to job preferences on the basis of how important it is (P[0098]) using relative weights, including a range of values (i.e., a ranking is performed) (P[0099]). The job preference segment includes the eres owner's desired career focus areas. (P[0079]). The career focus area describes the type of work sought. The system provides a multi-tiered collection of choices that drill down to greater specificity. P[0138] provides an example of specific career focus areas within "Legal Services". Skills are inherent in a specific career, therefore the designation of preferred career focus areas through a numerical range (P[0137]) results in ranking a desire to perform the skills associated with each career focus area. McCall further discloses a match factor and a final score. (P[0185-0187])
29. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included ranking skill preferences, as disclosed by McCall, in the system of Puram for the motivation of giving users the ability to have greater control over the results of a search by weighing preferences with regard to attributes in a given data file. (McCall; P[0011]). Puram

Art Unit: 3629

discloses that during data matching, candidates' records are compared to skill and preference data in order to weed out candidates that would not be interested in a given position. (C7; L20).

30. Puram does not disclose counting keywords to validate results.
31. Linz, however, discloses scanning resumes to extract keywords and assigning a more favorable status to job applicants whose resumes include certain keywords, such as specific degrees, certifications or other credentials. Candidates can also be excluded that have more than a threshold number of jobs within a certain period of time. (P[0022]). Counting keywords is an inherent part of determining a number of jobs, for example. The act of excluding such a candidate provides the validation. Further, even an instance of one keyword constitutes a count, therefore the extraction of keywords regarding degrees, certification and credential discloses counting of keywords. The assignment of a favorable status provides the validation of the candidate.
32. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included counting keywords to validate results, as disclosed by Linz, in the system of Puram for the motivation of matching job applicants to specific employment opportunities (Linz; Abstract). It is obvious that a job applicant, in addition to storing skill profiles for matching to job opportunities as taught by Puram, would submit resumes to perspective employers. Therefore it is obvious to screen resumes for keywords to designate potential candidates in order to expedite an employer's need to fill a position.
33. **Claims 5 and 25:** Puram/Stimac/McCall discloses the limitations of claims 1 and 48, above. Puram does not disclose a ranking of like, dislike and indifference.
34. However, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The ranking would be performed regardless of attribute name of the rank.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).



Art Unit: 3629

35. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included selections of preference such as like, dislike or indifferent because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the name of a ranking determination does not patentably distinguish the claimed invention.
36. **Claims 10 and 30:** Puram/Stimac/McCall discloses the limitations of Claims 1 and 48, above. Puram further discloses *posting the inline interview on a website of a global computer communication network*. (col. 3; lines 27-31 and Figure 1c).
37. **Claim 44:** Puram discloses that candidates rank experience information regarding tools (C4; L6-22) and desire (C7; L12-19) but does not disclose ranking their desire to use each of the tools.
38. McCall, however, discloses a system for matching job seekers to jobs based on skills and preferences. The "eres owner" (i.e., the job seeker) assess factors related to job preferences on the basis of how important it is (P[0098]) using relative weights, including a range of values (i.e., a ranking is performed) (P[0099]). The job preference segment includes the eres owner's desired career focus areas. (P[0079]). The career focus area describes the type of work sought. The system provides a multi-tiered collection of choices that drill down to greater specificity. P[0138] provides an example of specific career focus areas within "Legal Services". Tools used to perform in the position are inherent in a specific career area, therefore the designation of preferred career focus areas through a numerical range (P[0137]) results in ranking a desire to use the tools associated with each career focus area. McCall further discloses a match factor and a final score. (P[0185-0187])
39. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have included ranking tool preferences, as disclosed by McCall, in the system of Puram for the motivation of giving users the ability to have greater control over the results of a search by weighing preferences with regard to attributes in a given data file. (McCall; P[0011]). Puram discloses that during data matching, candidates' records are compared to skill and preference data in order to weed out candidates that would not be interested in a given position. (C7; L20).

Art Unit: 3629

40. **Claim 45:** Puram discloses desire (C7; L12-19) but does not disclose an average desire. McCall, as discussed above, discloses ranking preferences, but does not disclose an average.
41. However, these differences are only found in the **nonfunctional descriptive data** and are not functionally involved in the steps recited. **The rankings would be performed regardless of the level of desire.** Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
42. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included average desire because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the rank designation does not patentably distinguish the claimed invention.
43. **Claims 16-18 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Puram et al. (US Pat. No. 6,289,340, hereafter referred to as "Puram") in view of Stimac (US Pub. No. 2003/0071852) in view of McCall et al. (US Pub. No. 2002/0059228, hereinafter referred to as "McCall") in view of Linz (US Pub. No. 2001/0032112) in further view of Herz (US Pat. No. 6,029,195).
44. **Claim 16:** Puram/Stimac/McCall discloses the limitations of Claim 1, above. Puram further discloses *required, custom and extra* (col. 6; lines 15-31 (core and custom) and col. 6; line 8 (beneficial)); *skills and tools met and exceeded* (col. 6; lines 1-2; (skills and tools) col. 7; lines 34-37 (fit the needs) and 51-54 (exceeds)); and *desire* (col. 7; lines 12-19).
45. Puram does not disclose *multiplying by a weighted value to produce a product*.
46. Herz, however in column 22, lines 2-28, discloses multiplying a distance between two object sets by a weighting factor.
47. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included multiplying by a weighting factor, as disclosed by Herz in the system

Art Unit: 3629

disclosed by Puram, for the motivation of providing a method of specifying “the relative importance of the attributes in establishing similarity or difference...” (Herz; col. 22; lines 22-24).

- 48. Claims 17 and 18:** Puram/Stimac/McCall in view of Herz discloses the limitations of Claim 16, above. Puram does not disclose equivalent weightings or varying weightings.
- 49.** Herz, however in column 20, lines 23-47, discloses “Not all point estimates ... should be given equal weight” and “point estimates ... should be weighted less heavily...” and “estimate of topical interest...should be weighted more heavily if user V has had more experience...”
- 50.** Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a variety of weightings, including equivalent, as disclosed by Herz in the system disclosed by Puram, for the motivation of providing a method of specifying “the relative importance of the attributes in establishing similarity or difference...” (Herz; col. 22; lines 22-24).
- 51. Claim 20:** Puram/Stimac/McCall in view of Herz discloses the limitations of Claim 16, above. Puram further discloses *desire to perform* (col. 7; lines 12-15) and *experience* (col. 4; line 44).
- 52.** Puram does not disclose varying weightings.
- 53.** Herz, however in column 20, lines 23-47, discloses “Not all point estimates ... should be given equal weight” and “point estimates ... should be weighted less heavily...” and “estimate of topical interest...should be weighted more heavily if user V has had more experience...”
- 54.** Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a variety of weightings, including equivalent, as disclosed by Herz in the system disclosed by Puram, for the motivation of providing a method of specifying “the relative importance of the attributes in establishing similarity or difference...” (Herz; col. 22; lines 22-24).

### ***Response to Arguments***

55. Applicant's arguments filed January 13, 2009 have been fully considered but they are not persuasive. Applicant argues that Linz does not teach counting keywords to provide validation. The Examiner disagrees. Linz provides scanning resumes to extract keywords and assigning a more favorable status to job applicants whose resumes include certain keywords, such as specific degrees, certifications or other credentials. Candidates can also be excluded that have more than a threshold number of jobs within a certain period of time. Counting keywords is an inherent part of determining a number of jobs, for example. The act of excluding such a candidate provides the validation. Further, even an instance of one keyword constitutes a count, therefore the extraction of keywords regarding degrees, certification and credential discloses counting of keywords. The assignment of a favorable status provides the validation of the candidate. Thus, Linz's use of the occurrence of keywords to impact the status of the candidate's resume provides an example of validation.
56. The Examiner notes that Applicant's specification does not provide any guidance so to how to interpret "validation" by counting keywords. It is appropriate that the Examiner give the claims the broadest reasonable interpretation in light of the specification.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabrielle McCormick whose telephone number is (571)270-1828. The examiner can normally be reached on Monday - Thursday (5:30 - 4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/G. M./  
Examiner, Art Unit 3629

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629